IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 10794 OF 2004

The Head Master,
Shivaji Vidyalaya (Jr. College)
and another ...Petitioners

Versus

Dattatray Eknath Sangar & Ors. ...Respondents

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Mr. N.V. Bandiwadekar, counsel for Petitioners

Ms. Ranjana Todankar h/f S.S. Pakale for Respondent No.1.

Mr. M.H. Solkar, A.G.P. for Respondent No.2.

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CORAM: B. H. MARLAPALLE, J.

DATED: 3RD FEBRUARY, 2005

P.C.:-

1. Heard Mr. Bandiwadekar, the learned counsel for the petitioner Management which is aggrieved by the decision of the School Tribunal, Kolhapur Region at Kolhapur in Appeal No. 142 of 1998. The said appeal was filed by the present respondent No.1 alleging that when he reported for duty on 4.2.98 he was not allowed to join and was informed that he would be called back. However, when he went to report for duty on 25.7.98 he was purportedly informed that his services were already terminated though he had not received any order of termination.

2. The respondent No.1 was employed as a clerk and was a permanent employee. He was on sanctioned leave from 20.1.98 to 3.2.1998. As per his contentions set out in the appeal memo when he went to resume his duties on 4.2.1998 he was informed by the Head Master that he should meet the President of the Jai Shivraj Education Society before joining the duties. He made repeated attempts to meet the said President but in vain. On 25.7.1998 he again contacted the Head Master and the President and in the meeting he had with them, he was called upon to submit his resignation which he refused to do. He further alleged that on account of political rivalry which had no nexus with the duties he was required to perform, he was by oral orders removed from service from 25.7.98. On 11.8.98 he filed appeal No. 142 of 1998 and on the very next day, an ex-parte order of reinstatement by way of interim relief was passed in his favour. Though the said order was served on the Management he was not reinstated. The Management filed its reply in the appeal and denied the termination of service. It contended that the appellant himself remained absent because of some serious incident amounting to act of moral turpitude in which he was involved and he had made out a false case of illegal termination of service. Even otherwise, the management took up the issue of limitation with reference to the date of initial

alleged termination i.e. 4.2.1998.

3. By way of an abundant precaution, the respondent No.1 had submitted an application for condonation of delay after about two years in the pending appeal and the same was rejected as not maintainable but by keeping the issue of limitation open for consideration at the time of final disposal of appeal. The Tribunal framed the issues including the issue of limitation. It held that there was delay caused in filing the appeal and it was required to be condoned. It further held that there was a oral termination of service as on 2.2.98 and the said act was illegal. While granting relief, the Tribunal thought it fit to grant the order of reinstatement but denied the backwages since 20.1.1998 till the decision i.e. 18.10.2004.

4. Admittedly, after filing the written statement, the management did not file pursis or an application showing its willingness to take the appellant back in service if it strongly felt that there was no cause of action to file the appeal as there was no termination order either oral or in writing. On the contrary the interim order dated 12.8.98 was not implemented till it was vacated by way of pursis at Exh.33. The management relied upon the memo dated 2.2.98 issued to the appellant and it only stated

that from 20.1.98 he had remained absent without leave, his explanation was called for. The school Tribunal rightly referred to Rule 16(3) of the M.E.P.S. Rules, 1981 which reads as under;-

> Rule 16(3) - In case of a permanent employee who, without sufficient cause, fails to apply for leave within seven days from the date of absence, it shall be treated as breach of disciplinary action after due inquiry/ permanent employee who is absent from duty without leave continuously for a period (exceeding) three years or more,shall be deemed to have voluntarily abandoned his services."

5. To exercise the power that was available with the management under Rule 16(3), it was required to follow the procedure as set out under the M.E.P.S. Rules 1981 and more particularly Rules 33 to 37 of the said Rules. The Tribunal therefore, rightly came to the conclusion that by oral orders the appellant was removed from service from 2.2.98 and the reasonings given for condoning the delay is well supported. While moulding the relief considering the behaviour of the employee it was observed that his

remaining absent from 20.1.98 would not entitle him for wages from that date till the date of the decision in the appeal. This approach is well balanced. Under the circumstances, the challenge raised to the order passed by the School Tribunal is devoid of merits and does not call for interference under Article 227 of the Constitution.

6. Mr. Bandiwadekar submitted that the respondent No.1 has been suspended pending departmental enquiry some time in the month of January, 2005. It is made clear that the order passed by the Tribunal does not cause prejudice to the respective parties' rights under the M.E.P.S. Rules 1981 and any subsequent events will be subject to the remedy that is available under the said Rules.

7. The petition is disposed of in the above terms.